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Cheung Hoi Yu

2055.043

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23405

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10/30/2009

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EXAMINER

CHUNDURU, SURYAPRABHA

ART UNIT

PAPER NUMBER

1637

MAIL DATE

DELIVERY MODE

10/30/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

DETAILED ACTION

1. The Applicants' response to the office action filed on August 03, 2009 has been considered and acknowledged.

Status of the application

2. Claims 5-16 along with SEQ ID NO. 1 are pending under examination. Claims 1-2, 4, 17-19 and 26-41 were previously withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Group and non-elected SEQ ID NOs. All the arguments and the amendment were fully considered and found persuasive in-part for the reasons that follow.

Information Disclosure Statement

3. The Information Disclosure Statement filed on August 03, 2009 provides a foreign language document, which is not considered since it does not provide equivalent English translation for the document.

Claim objections

4. Claim 10 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. The instant claim 10 depends on claim 5 that incorporated all the limitations of claim 10 and therefore the instant claim do not further limit claim 5.

Response to Arguments:

5. with regard to the rejection of claims 5-6, and 8 under 35 USC 102(e) as being anticipated by Dean et al., Applicants' arguments and the amendment were fully considered and found persuasive. The rejection is withdrawn herein in view of the amendment.

6. With regard to the rejection of claims 5-6, 8-16, under 35 USC 102(e) as being anticipated by Peiris et al. (here after Peiris I), Applicants arguments and the amendment were fully considered and found unpersuasive because the amendment of claim 5 did not change the scope of the claim, because the step (iii) recites performing real-time PCR on the nucleic acid of the pathogenic infectious agent and Peiris I does disclose said limitations. Further the arguments drawn to the use of amplification followed by real-time PCR do not require the product of the first amplification, instead the claim as amended requires only the nucleic acid of the pathogenic infectious agent and Peiris I does teach said limitations (both amplification and real-time amplification using the nucleic acid from the infectious agent, see at least col. 33-34, section 6.7, wherein nucleic acid (RNA) is amplified first using RT-PCR and followed by amplification of said nucleic acid by real-time PCR) as discussed in the rejection. In addition claim 10, recites, optionally amplified by PCR or NASBA or any other nucleic amplification, and examiner notes that the 'optionally' step is not a required step since the step is not an active step. Accordingly the rejection is maintained.

7. With regard to the rejection of claims 5-16, under 35 USC 102(e) as being anticipated by Peiris et al. (here after Peiris II), Applicants' arguments and the amendment were fully

considered and found unpersuasive because as discussed above the claims as amended do not require PCR product of the first amplification for subsequent real-time PCR and Peiris II does anticipate the instant claims as discussed in the rejection. Accordingly the rejection is maintained.

Conclusion

No claims are allowable.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Suryaprabha Chunduru whose telephone number is 571-272-0783. The examiner can normally be reached on 8.30A.M. - 4.30P.M, Mon - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Benzion can be reached on 571-272-0782. The fax phone number for

the organization where this application or proceeding is assigned is 571-273-

8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Suryaprabha Chunduru/
Primary Examiner, Art Unit 1637